

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

BRENDA K. VESTAL,

Plaintiff,

v.

CIVIL ACTION NO. 1:18-00422

NANCY A. BERRYHILL,
Acting Commissioner of the
Social Security Administration,

Defendant.

MEMORANDUM OPINION AND ORDER

By Standing Order, this action was referred to United States Magistrate Judge Omar J. Aboulhosn for submission of findings and recommendations regarding disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). Magistrate Judge Aboulhosn submitted to the court his Proposed Findings and Recommendation ("PF&R") on December 12, 2018, in which he recommended that the district court grant plaintiff's request for judgment on the pleadings to the extent that the final decision be reversed; deny the Commissioner's request to affirm the final decision; reverse the final decision of the Commissioner; and remand this matter back to the Commissioner pursuant to the fourth sentence of 42 U.S.G. § 405(g) for further administrative proceedings in order for the ALJ to properly consider and evaluate Dr. Rago's medical source statement in order to completely assess the plaintiff's

limitations under "paragraph B" criteria. (ECF No. 26).

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted fourteen days, plus three mailing days, in which to file any objections to the magistrate judge's PF&R. The failure of any party to file such objections constitutes a waiver of such party's right to a de novo review by this court. See Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

Neither party has filed any objections to the magistrate judge's PF&R within the required time period. Accordingly, the court adopts the factual and legal analysis contained within the PF&R as follows:

1. Plaintiff's request for judgment on the pleadings is **GRANTED**, to the extent that the final decision be reversed, (ECF No. 23);
2. Commissioner's request to affirm the final decision is **DENIED**, (ECF No. 24);
3. The final decision of the Commissioner is **REVERSED**; and
4. The Clerk is directed to **REMAND** this matter back to the Commissioner pursuant to the fourth sentence of 42 U.S.G. § 405(g) for further administrative proceedings in order for the ALJ to properly consider and evaluate Dr. Rago's medical source statement in order to completely assess the plaintiff's limitations under "paragraph B" criteria.

The Clerk is directed to forward a copy of this Memorandum Opinion and Order to counsel of record.

It is **SO ORDERED** this 28th day of May, 2019.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", written over a horizontal line.

David A. Faber
Senior United States District Judge